

C O U N C I L C O M M U N I C A T I O N

TO : THE CITY COUNCIL
FROM : THE CITY MANAGER'S OFFICE

COUNCIL MEETING DATE:
SEPTEMBER 28, 1988

SUBJECT: ADOPTION OF ORDINANCE NO. 1433 - AN ORDINANCE OF THE LODI CITY COUNCIL GRANTING
EXCLUSIVE FRANCHISE FOR WASTE DISPOSAL SERVICES

Ordinance No. 1433 - "An Ordinance of the Lodi City Council Granting Exclusive Franchise for Waste Disposal Services" was introduced at the regular meeting of September 7, 1988.

Pursuant to State Statute, ordinances may be adopted five days after their introduction following reading by title.

This Ordinance has been approved as to form by the City Attorney.

RECOMMENDED ACTION: Following reading by title, it would be appropriate for the Lodi City Council to adopt Ordinance No. 1433.

Alice M. Reimche
Alice M. Reimche
City Clerk

AMR:jjj

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ORDINANCE NO. 1433

AN ORDINANCE OF THE LCDI CITY COUNCIL
GRANTING EXCLUSIVE FRANCHISE FOR WASTE DISPOSAL SERVICES

WHEREAS, Lodi Sanitary City Disposal Company, Inc. has long served the City of Lodi by providing competent and efficient refuse services and is familiar with the needs of the City in regard to such services; and

WHEREAS, Lodi Sanitary City Disposal Company, Inc. has invested substantial amounts of money to enable it to provide such services, including a modern transfer station for the benefit of the citizens of Lodi; and

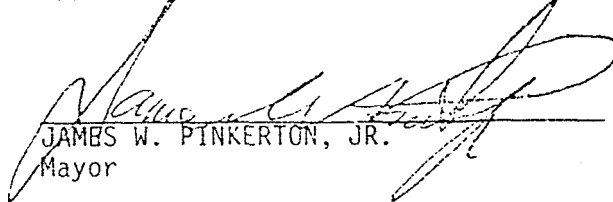
WHEREAS, the Lodi City Council has determined, pursuant to Government Code § 66757, that the public health, safety, and well being require that refuse services in the City of Lodi be provided by means of an exclusive contract, without competitive bidding; and

WHEREAS, Lodi Sanitary City Disposal Company, Inc., a California corporation, is qualified to perform refuse collection services by

means of such a contract, in the interests of public health, safety, and well being, and has proposed such a contract for consideration;

NOW, THEREFORE, THE LODI CITY COUNCIL ORDAINS that the City shall enter into an exclusive contract with Lodi Sanitary City Disposal Company, Inc. for the exclusive right to provide refuse collection services for the City of Lodi. A copy of the Agreement is attached hereto and incorporated herein by reference.

Approved this 28th day of September, 1988


JAMES W. PINKERTON, JR.
Mayor

Attest:



ALICE M. REIMCHE
City Clerk

State of California
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1433 was introduced at a regular meeting of the City Council of the City of Lodi held September 7, 1988 and was thereafter passed, adopted and ordered to print at an adjourned regular meeting of said Council held September 28, 1988 by the following vote:

Ayes :	Council Members - Hinchman, Reid, Snider and Pinkerton (Mayor)
Noes :	Council Members - None
Absent :	Council Members - Olson
Abstain :	Council Members - None

I further certify that Ordinance No. 1433 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.


ALICE M. REINCHE
City Clerk

Approved as to Form


BOBBY W. McNATT
City Attorney

CITY COUNCIL

JAMES W. PINKERTON, Jr., Mayor

JOHN R. (Randy) SNIDER

Mayor Pro Tempore

DAVID M. HINCHMAN

EVELYN M. OLSON

FRED M. REID

CITY OF LODI

CITY HALL, 221 WEST PINE STREET

CALL BOX 3006

LODI, CALIFORNIA 95241-1910

(209) 334-5634

THOMAS A. PETERSON
City Manager

ALICE M. REIMCHE
City Clerk

BOB McNATT
City Attorney

October 3, 1988

Mr. David Vaccarezza
General Manager
Lodi Sanitary City Disposal Co., Inc.
1333 East Turner Road
Lodi, CA 95240

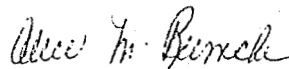
Dear David:

Pursuant to our recent conversation, I have enclosed an amended Page 1 of Agreement dated September 7, 1988 between the City of Lodi and Lodi Sanitary City Disposal Company, Inc., for collection and transportation of refuse within the City limits. Please affix this amended page to your executed copy of the subject Agreement.

The amendment is in Paragraph C and reflects the fact that Ordinance No. 1433 was adopted by the Lodi City Council at the adjourned regular Council meeting of September 28, 1988.

Should you have any questions regarding this matter, please do not hesitate to call this office.

Very truly yours,



Alice M. Reimche
City Clerk

AMR -jj

A G R E E M E N T

This Agreement dated September 7, 1988, (the "Agreement") is entered into by the City of Lodi, a Municipal Corporation ("City"). and Lodi Sanitary City Disposal Co., Inc. a California Corporation ("Contractor").

RECITALS

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- A. To protect the public health, safety and well being of the citizens and residents of **the** City, it is necessary to provide for the orderly collection and transportation of refuse within the City limits.
 - B. Contractor desires to contract with the City to provide the necessary services.
 - C. By Lodi City Council Ordinance No. 1433 introduced at the Regular Council Meeting of September 7, 1988 and adopted at the Adjourned Regular Council Meeting of September 28, 1988, the City **was** authorized to execute this Agreement.

AGREEMENT

In consideration of the foregoing, and of the promises and mutual covenants contained in this Agreement, the parties, intending to be legally bound, agree as follows:

1. Definitions

For purposes of this Agreement, unless otherwise apparent from the context, the following definitions apply:

a. Refuse

Any and all discarded items and substances of every kind, including infectious wastes, salvageable or recyclable materials, and yard-waste, but not including sewage, septic tank contents, sand trap contents, grease trap contents, or hazardous waste as defined by state and/or federal law.

b. Residential Customers

All residences within the City limits, including single family and multi-family dwellings.

c. Commercial Customers

All commercial enterprises within the City limits.

2. Scope of Agreement

Contractor shall furnish all materials and equipment required for the orderly collection of refuse on a regularly scheduled basis to all residential and commercial customers, within the City limits, and to transport the refuse to a disposal site provided or designated by City. Contractor's services shall be subject to the terms of this Agreement, the Lodi Municipal Code, and all other county, state and federal laws pertaining to the collection and transportation of refuse to which Contractor is subject. Contractor shall perform the services provided for in this Agreement only for the compensation provided in this Agreement, and not otherwise.

3. Exclusive Nature of Agreement

Contractor shall have within the City limits, subject to the limitations contained in this Agreement, the exclusive right and duty to collect and transport to a site designated by the City all refuse except industrial refuse. Contractor shall have the full and exclusive right to all recyclable or salvageable material collected in connection with the refuse, and shall have the exclusive right to any funds realized from the sale of recycled or salvaged materials. The exclusive rights granted to Contractor by this Agreement shall not interfere with or in any way restrict City's right to collect, transport and dispose of septic tank, sand trap and grease trap contents.

4. Term

The term of this Agreement shall be for a period of seven years beginning July 1, 1989. Contractor shall have the option to renew this agreement once, for an additional seven years by giving the City notice thereof not later than January 1, 1995. Thereafter, at the City's option, this agreement shall be renewable for seven-year increments by giving the Contractor notice of renewal not later than 18 months prior to the expiration of the term then current.

5. Required Permits

Contractor and any sub-contractors it employs shall obtain any legally required permits or licenses for the lawful performance of this Agreement.

6. Level of Services

Contractor shall maintain sufficient personnel, materials and equipment to maintain the following collection schedules:

a. Residential Customers

Refuse shall be collected no less frequently than once each calendar week, with collections from a given residential customer scheduled to occur on the same day or days each week.

b. Commercial Customers

Refuse shall be collected no less frequently than once each calendar week, up to a maximum of six times each week, as may be mutually agreed by Contractor and a given commercial customer, with collections scheduled to occur on the same day or days each week.

7. Holiday Collection

When a scheduled collection day falls on a holiday (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day), Contractor may, at its option and upon notice to its customers by publication in a local newspaper of general circulation, collect either on the holiday or on the day immediately prior to, or delay collection schedules one day.

8. Hours of Collection

Except for holidays and emergency situations, all residential collections shall be made between the hours of 5:00 a.m. and 6:00 p.m. on Mondays through Fridays, and all commercial collections shall be made between the hours of 5:00 a.m. and 6:00 p.m. on Mondays through Saturdays. Collections may be made on holidays and in emergency situations at other than the designated days and times.

5. Handling of Containers

Contractor shall leave refuse containers in an upright position in the location at which they were found prior to collection. Contractor shall be liable for damage to refuse containers or private property occurring as the result of *its* own negligence, but not otherwise.

10. Residential Routes ; Notices

Thirty days prior to the commencement of service under this Agreement, Contractor shall provide City with a detailed map of residential collection routes and a residential collection schedule. In the event Contractor changes its residential collection schedule, Contractor shall notify all affected residential customers seven days in advance by prepaid United States mail or by direct distribution of notice to the premises.

11. Justifiable Cause for Refusal of Service

Contractor shall be justified in refusing service to any customer who fails to comply with all provisions of this Agreement and the Lodi Municipal Code for the handling of refuse.

12. Violation Notices

If Contractor, for justifiable cause, does not collect refuse from a customer, Contractor shall give the customer notice of the reasons for refusing to collect, citing the appropriate reasons ^{therefore}. The notice shall be given by means of a tag no smaller than 3" x 7" securely fastened to the container or article not collected. Contractor shall maintain a record of all notices given pursuant to this section.

13. Uniformed Collectors

All persons employed by Contractor to collect refuse shall be required to wear clean uniforms when on duty, including coveralls or trousers, shirts and jackets. Shirts and jackets shall bear a distinctive logo identifying the wearer as an employee of Contractor.

14. Vehicles and Equipment

All vehicles and equipment used by Contractor to perform the services required under this Agreement shall be wholly owned or leased by Contractor. All vehicles and equipment used in performing this Agreement shall bear a clearly readable sign containing Contractor's name and office telephone number. All vehicles and equipment shall conform to the requirements of all applicable county, state and federal laws and City ordinances, and all limitations in any licenses or permits under which Contractor operates. Should City at any time notify Contractor that any vehicle or piece of equipment is not in compliance with those standards, Contractor will remove the particular vehicle or equipment from service until it has been inspected and approved for service by City. In no event shall such a removal of vehicles or equipment from service relieve Contractor of its obligations to perform the services required under this Agreement.

15. Vehicles and Equipment Maintenance

Each vehicle and piece of equipment shall be maintained in a clean and sanitary condition, uniformly painted. All refuse collection vehicles shall be constructed, maintained and operated so that liquids or refuse will not blow, fall, sift or leak. Contractor shall pick up any refuse dropped or deposited in the process of collecting or transporting it to the disposal site. Each vehicle shall undergo an annual mechanical inspection by the San Joaquin County Local Health District, and inspection certificates shall be maintained on file at Contractor's office. Equipment shall be maintained to prevent unnecessary noise.

16. Vehicle and Equipment Storage

When not in use, all vehicles and equipment shall be stored indoors or in a fenced yard in compliance with all laws relating to the parking or storage of vehicles. No vehicle shall be parked with a full or partial load of refuse for more than 72 hours.

17. Disposal Site

Except for materials retained for recycling, Contractor shall transport collected refuse to the Harney Lane Sanitary Landfill for disposal, or to such other disposal site as City may from time to time designate.

18. Subcontracts

Contractor shall be responsible for the performance of all persons who may be engaged in performing the services provided by this Agreement, including subcontractors and their employees. City shall deal directly with Contractor concerning the performance of this Agreement, including the work of subcontractors. In the event City is dissatisfied with work performed by a subcontractor, City shall notify Contractor, who shall take appropriate action.

19. Time of the Essence

The parties acknowledge that the timely performance of this Agreement vitally affects the health and welfare of the public, and that time is therefore of the essence of this Agreement.

20. Breach by Contractor

In the event Contractor should default in the performance of any material provisions of this Agreement, and the default is not cured within 30 days after receipt of written notice of default from City, then City may, at its option, hold a hearing at its next City Council meeting to determine whether this Agreement should be terminated. In the event City decides to terminate this Agreement, City shall serve 10 days written notice of its intention to terminate upon Contractor. In the event City exercises its right to ~~terminate this Agreement~~, City may, at its option, either directly undertake performance of the services or arrange with other persons to perform the services with or without a written agreement. In either event, Contractor shall be liable to City for any expense City incurs in performing the services in excess of the amount that would be payable to Contractor had it performed the services under this Agreement.

In the event City exercises its option under this paragraph to terminate this Agreement, City shall pay to Contractor the amount due Contractor under the terms of this Agreement for services performed as of the date of termination, City may, in that event take possession of Contractor's equipment necessary to perform the services required under this Agreement, and retain it until City can purchase or otherwise acquire equipment suitable for that purpose, but in no event longer than 120 days. City shall compensate Contractor for the reasonable rental value of its equipment during the period City retains possession of it.

21. Contractor's Inability to Perform Due to Act of God

Contractor's failure to perform under the terms of this Agreement by reason of a major disaster, epidemic, or other act of God or other emergency shall not constitute a breach of this Agreement for purposes of paragraph 20 above.

22. Contractor's Insolvency

Contractor's failure to perform under the terms of this Agreement by reason of its insolvency or bankruptcy shall constitute a material breach of this Agreement for purposes of paragraph 20 above.

23. Contractor's Inability to Perform Due to Labor Dispute

In the event a labor dispute interrupts Contractor's services under this Agreement for more than 72 hours, City may take temporary possession and control of Contractor's facilities and equipment to enable City to continue to perform the refuse collection and transportation services provided for in this Agreement. In order to protect the public health, safety and welfare, City may retain possession and control of Contractor's facilities and equipment until Contractor demonstrates to City's satisfaction its ability to resume performing services; provided, however, that in no event shall City retain possession and control of Contractor's facilities and equipment longer than 120 days. In the event Contractor is unable to satisfactorily demonstrate its ability to perform by the end of the 120-day period, City may terminate this Agreement as provided in paragraph 20 above.

During any period in which City has temporary possession and control of Contractor's facilities and equipment, Contractor shall not be entitled to compensation from City, except for the fair rental value of its facilities and equipment. During any such period, City may employ Contractor's employees, provided that the number of employees and their rate of compensation shall not exceed that existing at the time Contractor became unable to perform because of the labor dispute.

24. Contractor's Office

Contractor shall maintain an office at a fixed location within City limits, and shall maintain telephone services there in Contractor's name. Contractor shall staff the office from the hours of 8:00 a.m. to 5:00 p.m. on each day collections are scheduled, except weekends and holidays, and shall staff it with a person to receive complaints and answer inquiries during office hours. Responses to complaints or inquiries shall be made no later than the end of the next work day following the day on which the complaint is received, and shall be recorded in a log specifying the date and time received, and the nature and time of disposition. All refuse collection vehicles shall be equipped for two-way radio communication with the office.

25. Collection Rates

City shall have the right to determine the rates Contractor may charge to customers for refuse collection and transportation services. The rates established shall be reviewed annually during the month of June and, if appropriate, adjusted effective July 1. In its determination of any appropriate rate adjustments, the City Council may consider, but not be limited to, the change in the Consumer Price Index and/or any other indices deemed appropriate for the past twelve months, and/or any extraordinary increases or decreases in the cost of equipment, insurance, fuel, federal, state and/or local government taxes, fees, assessments, or other special costs.

In the event of any unforeseen special occurrences, such as a change in landfill location to other than the present San Joaquin County Harney Lane Sanitary Landfill site, stricter environmental requirements on equipment, or change in service levels or frequency, the Contractor shall have the right to renegotiate the rates. The contractor will be entitled to a rate adjustment immediately based on any dump fee adjustments.

26. Billings

City shall, as part of its municipal utility billing system, bill regularly scheduled customers and collect payments from them for the refuse collection and transportation service: provided by this Agreement. Contractor shall provide City with all necessary billing information as soon as possible but no later than the City's regularly scheduled billing date. City will furnish billing schedule to Contractor.

27. Contractor Compensation

City shall remit to Contractor each Friday, the net collections in the previous week after deducting from collections an 8% franchise fee. City hereby agrees to keep and maintain proper records of its collection hereunder and to make such records available to Contractor or its authorized agent for audit at any reasonable time in the office of the City of Lodi Finance Department.

28. Contractor's Financial Records and Reports

Contractor shall grant City access to its financial records relevant to the performance of this Agreement upon reasonable notice, at its office, during regular business hours. Contractor shall provide City with a copy of its annual financial statements within 120 days after the close of the first year of the term of this Agreement, and within 120 days of the close of each succeeding three-year period during the term of this Agreement. The financial statements shall be prepared by an independent certified or public accountant according to accepted accounting principles, and shall reflect only Contractor's business activities within City.

29. Business License

Contractor shall have and maintain a valid City business license throughout the term of this Agreement.

30. Liability Insurance

Contractor does hereby agree to indemnify City free and harmless of any and all claims, damages, suits or actions that may or might arise by reason of the Contractor performing duties required under the terms of this Agreement.

In this connection, Contractor, agrees to furnish the City with evidence of compliance with the requirements of Section 13.16.060 of the Lodi Municipal Code, i.e., furnishing evidence of Workers' Compensation Insurance coverage and a certificate of insurance showing a minimum of \$509,000 for damage to property, and 51,000,000 for injury to persons, with the City of Lodi named as an additional insured on said policy.

Contractor shall furnish City with certificates of insurance prior to commencement of services, which shall provide that coverage shall not be cancelled without 30 days advance written notice to City.

31. Nondiscrimination

Neither the Contractor nor any subcontractor, or any person acting in their behalf, shall discriminate against any person because of race, sex, age, color, religion, national origin or handicap.

32. Assignment of Agreement

This Agreement is premised on the mutual trust and faith which exists between the City and Contractor as presently constituted based upon a long term relationship. As such, this contract shall, with the exceptions noted herein, be deemed personal between the parties and shall not be assignable without the prior written consent of the City. In the event of the death or disability of any majority shareholder, or officer of the Contractor, as constituted at the time of the signing of this Agreement, the heirs, devisees, or beneficiaries shall have the right to assign such Agreement with the consent of the City, which shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

C I T Y

CITY OF LODI

A Municipal Corporation



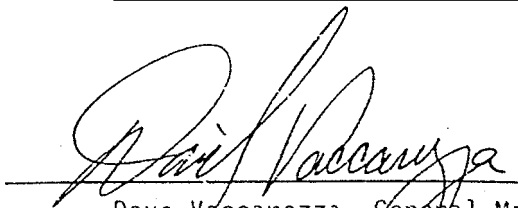
Thomas A. Peterson, City Manager

Date: SEPT. 9, 1988

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C O N T R A C T O R

LODI SANITARY DISPOSAL CO., INC.




Dave Vaccarezza, General Manager

Date: 9/14/88

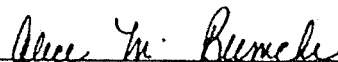
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Approved as to form:

Attest:



Bob McNatt, City Attorney



Alice M. Reimche, City Clerk